

PROPOSED CONFERENCE REPORT NO. 1
AUGUST 24, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1897

Introduced by Senator Burton
(Coauthor: Senator Figueroa)

March 3, 2004

An act to add Sections 8203.1 and 8203.6 to, 8203.6, 8273, and 8274 to, and to add Article 18.5 (commencing with Section 8410) to Chapter 2 of Part 6 of, the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1897, as amended, Burton. Child care reform.

Existing law authorizes the Superintendent of Public Instruction to develop standards for the implementation of quality child care programs and to contract for the provision of child care and development services.

~~This bill would declare the intent of the Legislature to reform the reimbursement system for child care based on specified criteria, and to establish quality provider pools to employ family child care providers.~~

The bill would require the Child Development Division of the State Department of Education, on or before July 1, 2006, to provide to the Superintendent of Public Instruction a baseline assessment of the

supply and demand for subsidized and unsubsidized child care. The bill would require the ~~Superintendent~~ *superintendent* to make recommendations to the Legislature on or before March 1, 2007, based on that assessment. ~~The recommendations would be required to include a recommendation on the most effective means for the state to collect from child care provider employers specified information about their employees.~~ The bill would require the assessment and recommendations to be updated every 2 years.

The bill would require the ~~Child Development Division~~ *division* to convene a task force, consisting of specified members, to develop and submit to the Legislature a Child Care and Development Workforce Development Plan. ~~The bill would require the plan to include, among other things, detailed expectations and a career ladder for staff of child care and development providers.~~ The bill would require the task force to submit the report to the Legislature on or before January 1, 2006. The provisions relating to the task force would not be operative if legislation is enacted during the 2003–04 Regular Session that creates a task force charged with addressing the elements required to be included in the plan.

The bill would also require the division to conduct a biennial assessment of the reimbursement rate system for subsidized child care. The bill would require the division to conduct specified activities as part of the assessment, including developing and implementing a pilot program, on or before July 1, 2006, to test a reimbursement rate system that uses a uniform regional base rate based on market rates drawn from the regional market rate survey for infants, preschool children, and schoolage children. The bill would require the division, by July 1, 2008, to develop criteria for enhancements to the reimbursement rates paid to subsidized child care providers for demonstrated quality program components, as specified.

The bill would require the superintendent, based on the assessment prepared by the division, to provide specified recommendations to the Legislature to improve the rate setting procedures of the division. The bill would require the recommendations, among other things, to include recommendations on the impact of the reimbursement rate pilot program and recommendations regarding the reimbursement rate quality enhancements proposed by the division.

This bill would establish the Option for Expanded Business Opportunities for the purpose of authorizing family child care providers to select agents to represent them to act collectively on specified

matters, including, among other things, negotiating for and purchasing group benefits, representing family child care providers in disputes or enforcement proceedings, and negotiating and entering into contracts with public and private entities that administer state funded public subsidies for family child care services.

The bill would authorize a family child care provider to select an agent to represent the provider and would deem an agent a certified agent upon verification by the State Mediation and Conciliation Services that the agent has written authorization for representation from 20% of all licensed family providers in the state.

The bill would require the State Department of Education no later than January 1, 2006, to adopt regulations governing the conduct of a certified agent and would authorize the superintendent to order a modification or discontinuance of conduct authorized by the bill if the superintendent determines that the disadvantages attributable to a potential reduction in competition demonstrably outweigh the benefits of the conduct.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) It is the intent of the Legislature to attain all
- 2 of the following goals:
- 3 (1) Improve the overall provision of child care, so that the
- 4 system is administered efficiently and maximum resources are
- 5 spent on care for children and families.
- 6 (2) Ensure that families eligible for subsidized child care under
- 7 the CalWORKs program and other child development programs,
- 8 and working families outside the subsidized child care system,
- 9 retain access to child care, and that access to high quality child care
- 10 is incrementally increased.
- 11 (3) Affirm and strengthen parental choice of child care and the
- 12 infrastructure to support those choices.
- 13 (4) Guarantee due process protections for families and child
- 14 care providers.
- 15 (5) Consider the impact of any reforms on both unsubsidized
- 16 and subsidized child care.
- 17 (6) Ensure that public reimbursements for child care are linked
- 18 to quality criteria.

(7) Ensure that child care providers have access to employment supports that provide for the improvement of quality standards in child care.

(b) To attain the goals expressed in subdivision (a), it is the intent of the Legislature to do all of the following:

~~(1) Require the State Department of Education to reform the reimbursement system for child care by establishing a unified rate system for child care centers and family day care providers that care for children of parents who receive public subsidies. The new rate structure would be designed for implementation during the 2005-06 fiscal year and consistent with the following principles:~~

~~(A) The basic rate would be linked to fees charged in the private child care market and adjusted annually to reflect changes in the private child care market.~~

~~(B) The need for special rates for certain children, based on the age of the child, the time in care, and demonstrated special needs of the child.~~

~~(C) Incentives would be provided for providers that meet measurable standards to improve child care and maintain high quality.~~

~~(2) Establish, by July 1, 2006, regional quality provider pools that would employ family child care providers who meet minimum quality and health and safety standards and who voluntarily choose to join the pool. Each quality provider pool would be authorized to operate a substitute provider pool for family child care providers. Each quality provider pool would be authorized to join together in a consortium, along with child care centers, regarding the more efficient and cost-effective administration and purchasing of benefits for family child care providers and child care employees.~~

(1) Establish a process and timeline to reform the child care reimbursement rate system.

(2) Establish a regular assessment of the supply and demand for subsidized and unsubsidized child care.

(3) Establish a workforce development plan for child care and development.

(4) Authorize family child care providers to act collectively for specific purposes.

(c) To attain the goal set forth in paragraph (2) of subdivision (a) of retaining access for families currently receiving subsidized

1 *child care, and to maintain existing subsidy programs at the*
2 *funding levels necessary to provide access for eligible families, it*
3 *is the intent of the Legislature that the rate reforms contemplated*
4 *in Sections 8273 and 8274 of the Education Code be implemented*
5 *only with additional, newly appropriated, unrestricted state or*
6 *federal funds.*

7 *(d) To attain the goal set forth in paragraph (2) of subdivision*
8 *(a) of incrementally increasing access to subsidized care for*
9 *eligible families, it is the intent of the Legislature that any new,*
10 *unrestricted state or federal funds that are appropriated for the*
11 *subsidized child care system first be used to maintain current*
12 *eligibility funding and then be balanced between incrementally*
13 *increasing the number of subsidies available for eligible families*
14 *and enhancements to quality of care through the rate reform*
15 *contemplated by Sections 8273 and 8274 of the Education Code.*

16 SEC. 2. Section 8203.1 is added to the Education Code, to
17 read:

18 8203.1. (a) (1) On or before July 1, 2006, the Child
19 Development Division of the State Department of Education shall
20 collect the information identified in subparagraphs (A) to (G),
21 inclusive, aggregate *and analyze* the information and provide to
22 the Superintendent of Public Instruction a baseline assessment of
23 the supply and demand for subsidized and unsubsidized child care.
24 The assessment shall be based on extant data and utilize
25 information gathered by resource and referral agencies, local child
26 care planning councils, alternative payment providers, the
27 University of California, and other entities. *In addition, the State*
28 *Department of Social Services is authorized to share information*
29 *with the division to develop the assessment.* The assessment shall
30 include, but not be limited to, all of the following information:

31 (A) The types of child care available from different types of
32 providers.

33 (B) The cost of available child care, according to the most
34 recent regional market rate analysis.

35 (C) The needs of low-income, working families eligible for
36 child care subsidies who remain on eligibility lists.

37 (D) The needs of working families not eligible for child care
38 subsidies.

39 (E) The availability and types of child care for those facing
40 barriers, including, but not limited to, infants, toddlers, children

1 with disabilities, and families who require nontraditional hours of
2 care.

3 (F) The availability and types of child care for families that
4 may want or need linguistically appropriate child care.

5 (G) Data on the diverse access challenges in rural and urban
6 communities.

7 (2) The assessment shall identify gaps in information currently
8 collected and include recommendations on the most effective
9 manner of collecting ongoing information to ensure that the
10 required assessments are provided efficiently and consistently and
11 ~~the manner of obtaining this information.~~

12 ~~(b) shall identify whether additional resources are required to~~
13 ~~collect necessary information.~~

14 *(b) Any funds that are needed to conduct the assessment,*
15 *including the operation of the advisory group established pursuant*
16 *to paragraph (3) of subdivision (c) shall be appropriated from the*
17 *General Fund for this purpose in the annual Budget Act.*

18 (c) The Superintendent of Public Instruction shall provide to
19 the Legislature, on or before March 1, 2007, and every two years
20 thereafter, an assessment of the supply and demand for child care
21 and recommendations based upon the assessment required
22 pursuant to subdivision (a).

23 (1) The recommendations shall include multiyear options to
24 incrementally do all of the following:

25 (A) Address the needs of families receiving child care
26 subsidies.

27 (B) Address the needs of low-income, working families
28 eligible for child care subsidies that remain on eligibility lists.

29 (C) Address the needs of working families not eligible for child
30 care subsidies.

31 (D) Increase access to high-quality care for families facing
32 child care barriers.

33 (E) Increase access to linguistically appropriate child care.

34 (F) Increase access to families in urban and rural areas,
35 including farmworker and agricultural communities.

36 ~~(2) (A) The recommendations shall include a~~
37 ~~recommendation on the most effective means for the department~~
38 ~~to collect from all employers of center or family provider child~~
39 ~~care employees that operate programs licensed by the state or~~

~~programs that receive funding from the state the following information:~~

~~(i) Sufficient information for the division to track and report on the tenure and retention of each child care worker employed by the provider.~~

~~(ii) The qualifications of each child care worker employed by the provider, including, but not limited to, educational and training attainment, and linguistic capabilities of employees.~~

(2) (A) The department shall hold public hearings to inform interested persons of the issues under consideration, and to receive comment and feedback to be incorporated into the recommendations of the superintendent.

(B) The information provided pursuant to this section shall be used to inform the required assessments and shall be made available to the public.

(3) The recommendations shall be developed in consultation with an advisory group that shall assist the Superintendent of Public Instruction in developing the recommendations. The advisory group shall include members representing all of the following:

(A) The State Department of Social Services.

(B) Parents of children receiving subsidized and unsubsidized child care.

(C) Various types of child care providers, including representatives of public and private subsidized and unsubsidized child care, part-day and full-day preschool programs, Head Start, the state preschool program, and center-based and family-based child care.

(D) Experts in early child care and education, including, but not limited to, administrators, teachers, and academics with expertise in early childhood development and research.

(E) Representatives of child care support entities, including resource and referral agencies, alternative payment programs, local child care planning councils, and child care advocacy groups.

(F) Regional Market Rate Survey researchers, including existing and past researchers.

(4) To the extent that the recommendations include the use of new, unrestricted state or federal funds, the recommendations shall describe the manner in which to balance the goals of incrementally increasing access to subsidized care for eligible

1 *families and the manner in which to strengthen the quality of care*
2 *through an improved rate system as contemplated by Sections*
3 *8273 and 8274.*

4 SEC. 3. Section 8203.6 is added to the Education Code, to
5 read:

6 8203.6. (a) (1) To the extent resources are available, the
7 Child Development Division of the State Department of Education
8 shall convene a task force consisting of representatives from all of
9 the following entities:

10 (A) The California Children and Families Commission.

11 (B) The office of the Chancellor of the California Community
12 Colleges.

13 (C) The University of California.

14 (D) The California State University.

15 (E) The Commission on Teacher Credentialing.

16 (F) The Child Development Division of the State Department
17 of Education.

18 (G) The California Child Care Resource and Referral Network.

19 (H) *The State Department of Social Services.*

20 (I) Representatives of the following:

21 (i) Parents of children in subsidized and unsubsidized child
22 care center and family child care settings.

23 (ii) Community-based programs that provide child care and
24 development training.

25 (iii) Private colleges providing child care and development
26 training.

27 (iv) Employee organizations that represent child care workers
28 and operate staff training programs.

29 (v) Providers of family child care services, *including licensed*
30 *and license-exempt providers and providers from nonsectarian*
31 *and faith-based child care programs*, and center-based teachers
32 who are consumers of training and development programs.

33 (vi) Early child care and education experts.

34 (vii) Child care center administrators, including part-day
35 programs, Head Start, and the state preschool program.

36 (viii) Local child care planning councils.

37 (ix) Local First Five commissions.

38 (x) *Statewide child development professional associations.*

39 (2) Task force participants shall serve without pay or
40 compensation.

1 (b) The task force shall operate in a manner that encourages
2 input and participation from the public.

3 (c) The task force shall conduct at least one public hearing prior
4 to submitting the report required pursuant to subdivision (d).

5 (d) (1) The task force shall develop and submit to the
6 Legislature on or before January 1, 2006, a Child Care and
7 Development Workforce Development Plan.

8 (2) The plan shall include all of the following information:

9 (A) Clear expectations for staff competencies and
10 requirements for each level of regulation for subsidized and
11 unsubsidized child care and development center- and home-based
12 services.

13 (B) Career ladders with links to teacher certification and
14 credentialing.

15 (C) A means for accreditation of training offered by public and
16 private entities, so that enrollees can meet the requirements of the
17 career ladder.

18 (D) Strategies for recruiting and retaining instructional staff
19 who reflect the ethnic, racial, linguistic, and cultural diversity of
20 California families.

21 (E) A means for providing child care and development staff
22 with information regarding available training supports, including,
23 but not limited to, English-as-a-second-language training
24 opportunities and scholarship programs.

25 (F) A method for assessing whether the available training
26 supports assure access to professional development opportunities
27 for direct care personnel in all settings and from a variety of ethnic
28 and linguistic backgrounds.

29 (G) Determination of how to develop a prudent and efficient
30 registry of child care and development workers, to be the
31 repository of information ~~for parents and others~~ about staff
32 stability and professional development, and to be used, in the
33 determination of qualification for enhanced reimbursement.

34 (H) Goals for qualifications of child care and development
35 providers, and a method to report to policymakers the status of
36 meeting those goals.

37 (I) A procedure for assessing the impact of the plan, and
38 updating the plan, every five years.

39 (J) *To the extent resources are required to implement the plan,*
40 *funds shall be appropriated in the annual Budget Act for this*

1 *purpose from the General Fund or from other state or federal*
2 *revenues appropriated for workforce development.*

3 (e) This section shall not be operative if, during the 2003–04
4 Regular Session, legislation is enacted that creates a workforce
5 development task force and the task force is charged with
6 addressing the elements required to be included in the plan
7 developed pursuant to subdivision (d).

8 *SEC. 4. Section 8273 is added to the Education Code, to read:*

9 *8273. (a) The Child Development Division of the department*
10 *shall conduct a biennial assessment of the reimbursement rate*
11 *system for subsidized child care. As part of the assessment, the*
12 *division shall develop analyses of, and recommendations for, the*
13 *reimbursement rate system using the advisory group established*
14 *pursuant to paragraph (3) of subdivision (b) of Section 8203.1.*
15 *The division shall conduct the following activities as a part of the*
16 *assessment.*

17 (1) By July 1, 2005, develop a cost estimate to bring the
18 reimbursement rate of child care centers subsidized by the state in
19 each region, excluding state preschools as described in Section
20 8235, to a level that meets or exceeds the 85th percentile of the
21 regional market rate by July 1, 2009. The cost estimate shall state
22 the annual incremental increases required to be given to each
23 center over the 2006–07, 2007–08, and 2008–09 fiscal years to
24 reach the 85th percentile by July 1, 2009.

25 (2) By July 1, 2005, review the funding structure for alternative
26 payment programs, including the impact of lowering
27 reimbursement rate limits and reducing the caseload in child care
28 programs, to determine whether those reductions would affect the
29 capacity of alternative payment programs to manage the program
30 effectively with fiscal integrity and with sufficient support to meet
31 the needs of eligible parents.

32 (3) By July 1, 2006, and every three years thereafter, examine
33 the child care reimbursement rate system in the alternative
34 payment program, to determine whether the law and regulations
35 ensure that rates are fairly established, efficiently delivered,
36 adequately linked to market rates, and as simple as possible for
37 parents, providers, and alternative payment programs consistent
38 with goals for fairness and integrity of the system. Following the
39 examinations, the division shall provide recommendations to the
40 Superintendent of Public Instruction to improve the operation of

1 *the reimbursement rate system. The initial examination conducted*
 2 *by July 1, 2006, shall include an assessment of whether the*
 3 *activities authorized by the Option for Expanded Business*
 4 *Opportunity (Art. 18.5 (commencing with Sec. 8410)) increases*
 5 *administrative obligations of alternative payment programs and,*
 6 *as a result, requires additional administrative support funding.*

7 (4) *By July 1, 2006, identify gaps in information currently*
 8 *collected to prepare the supply and demand assessment required*
 9 *by Section 8203.1, and a recommendation as to whether the*
 10 *information gathered by local entities should be standardized and,*
 11 *the costs of collecting information in a more standardized and*
 12 *routine fashion.*

13 (5) *By July 1, 2006, develop and implement a pilot program to*
 14 *test a new system for establishing reimbursement rates for*
 15 *subsidized child care provided through the alternative payment*
 16 *program. The pilot program shall be implemented in urban, rural,*
 17 *and suburban areas geographically dispersed throughout the state*
 18 *that reflect diverse economic conditions. Notwithstanding any*
 19 *other law, the pilot program shall test a reimbursement rate system*
 20 *that uses a uniform regional base rate based on market rates drawn*
 21 *from the regional market rate survey for infants, preschool*
 22 *children, and schoolaged children, and adjusted for family*
 23 *criteria, including the age of the child, exceptional needs of the*
 24 *child, and the amount of time in care, including whether the care*
 25 *occurs during nontraditional hours. The base rate shall be*
 26 *established to simplify the process of setting and administering*
 27 *rates for both the provider and the contract administrator, to*
 28 *assure the integrity of the information used to establish a*
 29 *provider's rate, to maintain the pool of providers accessible to*
 30 *parents, to maintain parent fees, and to assure that the rates reflect*
 31 *the level of regulation required of providers. The plan for a pilot*
 32 *program shall include an independent evaluation of the pilot*
 33 *program. Sections 18074.3 and 18074.4 of Title 5 of the California*
 34 *Code of Regulations shall be inoperative until the pilot program*
 35 *is completed and recommendations are submitted to the*
 36 *Legislature by the superintendent pursuant to paragraph (7) of*
 37 *subdivision (a) of Section 8274.*

38 (6) *By July 1, 2006, develop a recommendation as to the most*
 39 *effective means for the department to collect the following*
 40 *information from employers of direct care staff of child care*

1 *programs licensed by the state or that receive funding from the*
2 *state:*

3 *(A) Sufficient information to track and report on the tenure and*
4 *retention of each direct care child care staff worker employed by*
5 *the provider of a child care program.*

6 *(B) The qualifications of each direct care child care staff*
7 *worker employed by the provider of a child care program,*
8 *including, but not limited to, educational and training attainment,*
9 *and linguistic capabilities of the workers.*

10 *(7) By July 1, 2008, develop criteria for enhancements to the*
11 *reimbursement rates paid to subsidized child care providers for*
12 *demonstrated quality program components, and procedures for*
13 *how to assess whether providers have met the criteria. The quality*
14 *enhancement criteria shall include, but not be limited to, criteria*
15 *in the following areas:*

16 *(A) Accreditation standards from entities approved by the*
17 *department.*

18 *(B) Program quality standards identified in the Early*
19 *Childhood Environment Rating Scale and the Family Day Care*
20 *Rating Scale developed by the FPG Child Development Institute,*
21 *at benchmark levels determined appropriate.*

22 *(C) Standards for staff stability and professional development,*
23 *including a requirement that a majority of direct care staff*
24 *demonstrate that they participated in a professional development*
25 *program in the previous year and have multiple years of continuity*
26 *with children in the program.*

27 *(D) Standards for quality of work, including a quality work*
28 *environment for staff as evidenced by written agreements between*
29 *employers and employees of child care programs that increase*
30 *wages or benefits for nonmanagerial staff based on objective*
31 *factors including, but not limited to, job advancement and*
32 *expertise, and include a benefit package that includes employee*
33 *and dependent health insurance, retirement benefits, and a*
34 *minimum number of paid days of leave.*

35 *(E) Alternative means of demonstrating quality programs that*
36 *are approved by, and acceptable to, the department.*

37 *(b) By July 2008, the independent evaluator of the*
38 *reimbursement rate pilot program implemented pursuant to*
39 *paragraph (5) of subdivision (a) shall provide an assessment of the*

1 *impact of rate reform. The assessment shall include all of the*
2 *following information:*

3 *(1) Whether the piloted reimbursement rate program limits*
4 *access to quality care.*

5 *(2) Whether the differential reimbursement rates based on*
6 *regulatory status upgrades the regulatory status of providers.*

7 *(3) An analysis of the manner in which the piloted*
8 *reimbursement rate program may be implemented in counties with*
9 *a small number of programs, and counties with an*
10 *underrepresented number of program types for specific ages of*
11 *children.*

12 *(4) The impact of the piloted reimbursement rate program on*
13 *parents from their viewpoint, including both subsidized and*
14 *unsubsidized parents.*

15 *(c) Any new funds required to conduct the biennial assessment*
16 *required by this section, including any funds required to conduct*
17 *the pilot program required by paragraph (5) of subdivision (a),*
18 *shall be appropriated from the General Fund for this purpose in*
19 *the annual Budget Act.*

20 *SEC. 5. Section 8274 is added to the Education Code, to read:*

21 *8274. (a) The Superintendent of Public Instruction shall*
22 *provide to the Legislature recommendations to improve the*
23 *reimbursement rate setting procedures of the Child Development*
24 *Division of the department, using the findings of the division and*
25 *comment and feedback from the advisory group established*
26 *pursuant to paragraph (3) of subdivision (b) of Section 8203.1.*
27 *These recommendations shall include all of the following:*

28 *(1) By July 1, 2005, a plan to raise the reimbursement rates*
29 *provided to child care centers subsidized by the state in each*
30 *region, excluding state preschools as described in Section 8235, to*
31 *a level that meets or exceeds the 85th percentile of the regional*
32 *market rate, in increments over the period of July 1, 2006, to July*
33 *1, 2009, inclusive.*

34 *(2) By July 1, 2005, a recommendation of whether the*
35 *reimbursement rate system for alternative payment programs is*
36 *adequate and appropriate to ensure an efficient and effective*
37 *system.*

38 *(3) By July 1, 2005, a recommendation as to whether any*
39 *centralized eligibility list pilot projects should be extended*
40 *statewide, and the costs of extending the list statewide.*

1 (4) By March 1, 2007, and every three years thereafter,
2 recommendations about changes to the alternative payment
3 program reimbursement rate system to assure that the system
4 encourages access to care in both the subsidized and unsubsidized
5 systems, encourages quality care, minimizes administrative cost,
6 and minimizes fraud.

7 (5) By March 1, 2007, a recommendation as to whether
8 information gathered locally to prepare the supply and demand
9 assessment required by Section 8203.1 should be standardized and
10 the cost of the standardization.

11 (6) By March 1, 2007, a recommendation as to the most
12 effective means for the department to collect from all employers of
13 direct care child care programs licensed by the state or that receive
14 funding from the state information as to the tenure and retention
15 of each direct care child care staff worker employed by a provider,
16 and the qualifications of each direct care child care staff worker
17 employed by a provider.

18 (7) By March 1, 2009, a recommendation as to the impact of the
19 reimbursement rate pilot program implemented pursuant to
20 paragraph (5) of subdivision (a) of Section 8273. The
21 recommendation shall do all of the following:

22 (A) Recommend whether the reimbursement rate pilot program
23 should be implemented statewide.

24 (B) Identify the simplest and fairest way to assure integrity in
25 the operation of the reimbursement rate system while assuring
26 parental access to a range of options for care.

27 (8) By March 1, 2009, a recommendation for quality
28 enhancements to subsidized child care reimbursement rates, and
29 mechanisms to assess provider compliance with the quality
30 criteria developed pursuant to subdivision (i) of Section 8273.

31 (b) Funding for purposes of this section shall be provided by an
32 appropriation for this purpose from the General Fund in the
33 annual Budget Act.

34 SEC. 6. Article 18.5 (commencing with Section 8410) is
35 added to Chapter 2 of Part 6 of the Education Code, to read:

36
37 Article 18.5. Option for Expanded Business Opportunities
38 8410. (a) The Legislature recognizes that the existing system
39 of delivery of child care services in the state is characterized by a
40 patchwork of public and private relationships. The Legislature

1 further finds that the state could achieve greater efficiencies and
2 economies of scale in the administration of the public delivery
3 system, particularly with regard to the administrative system that
4 engages family child care providers. Further, the Legislature finds
5 that stability among child caregivers provides benefits to parents
6 and children in child care programs, that parental choice is
7 maximized when a diverse mix of options are available for child
8 care in a particular community and when there is a sufficient
9 supply of quality child care providers to meet the demand of
10 parents for care. The Legislature finds that it is in the public
11 interest to create a more efficient market by allowing family child
12 care providers to act collectively through representatives of their
13 choice and, in doing so, to create opportunities for increasing
14 quality child care options for consumers of child care. This
15 collective action is intended to further a number of objectives of
16 general benefit to the public, including all of the following:

17 (1) The promotion of standardized procedures for the delivery
18 of quality child care services.

19 (2) The achievement of economies of scale in the provision of
20 group benefits, including health insurance, for family child care
21 providers, to help encourage retention and stability among
22 providers.

23 (3) A more rational supply of quality family child care
24 programs to meet potential demand by providing opportunities for
25 effective marketing of child care services by or on behalf of family
26 child care providers.

27 (4) Stabilizing the availability of child care services and
28 consequent enhancement of parental choice in the use of those
29 services.

30 (b) In enacting this article, it is not the intent of the Legislature
31 to permit family child care providers to bargain with the state or
32 its agencies over reimbursement rates for services or to supplant
33 or duplicate existing state funded or state authorized services for
34 family child care providers.

35 8411. This article may be known, and shall be cited as, the
36 Option for Expanded Business Opportunities.

37 8412. (a) No later than July 1, 2006, the department shall
38 adopt regulations authorizing family child care providers to select
39 certified representatives. In authorizing this representation, it is
40 the intent of the Legislature to exempt this representation from

1 state antitrust laws and to provide immunity for this representation
2 from federal antitrust laws through the state action doctrine. The
3 Superintendent of Public Instruction shall, pursuant to Section
4 8419.5, supervise the authorized conduct to ensure that it serves
5 the state interests declared in this article.

6 (b) The regulations adopted by the department shall govern the
7 certification and decertification of representative agents,
8 qualifications of, and periodic reporting by, certified agents,
9 review of contracts entered into by certified agents on behalf of
10 family providers, and other activities authorized in this article.

11 8413. The purpose of this article is to authorize family
12 providers to select agents to represent the providers to act
13 collectively to achieve the following:

14 (a) Negotiate for and purchase group benefits, including health
15 insurance.

16 (b) Market family child care programs.

17 (c) Operate substitute provider pools, provided that pools are
18 not already operated in the community, and business development
19 programs for family child care providers.

20 (d) Represent family providers in disputes or enforcement
21 proceedings with regulatory and other agencies.

22 (e) Negotiate and enter into contracts with public and private
23 entities that administer state funded public subsidies for family
24 child care services.

25 8414. For the purpose of this article, “family providers”
26 means self-employed family child care providers who meet state
27 licensing requirements, the direct care assistants they employ, and
28 license-exempt family child care providers who provide care in
29 their own homes and who are trustline providers as defined in
30 Section 1596.60 of the Health and Safety Code.

31 8415. (a) A family provider may select an agent to represent
32 the provider. A family provider may only designate a single agent
33 to represent the provider, which may be an individual, association,
34 or other legal entity, provided that the individual, association, or
35 other legal entity has no conflict of interest in terms of being a
36 public or private entity that administers state public subsidies for
37 child care.

38 (b) The state, its agencies, and its contractors, and public or
39 private entities that administer state funded public subsidies for
40 child care, shall not interfere with the right of a family provider to

1 *select a representative agent, and shall not discriminate or*
2 *retaliate against a family provider for exercising that right.*

3 *(c) A family provider that executes a written authorization for*
4 *representation by an agent pursuant to this article may rescind the*
5 *authorization upon submission of written notification to the agent*
6 *during the last month of each calendar year.*

7 *(d) The State Mediation and Conciliation Service shall keep a*
8 *record of all authorizations and recessions of authorizations for*
9 *representation.*

10 *8416. (a) An agent designated to represent a family provider*
11 *is deemed a certified agent upon verification by the California*
12 *State Mediation and Conciliation Service that the agent has*
13 *written authorization for representation from 20 percent of all*
14 *licensed family providers in the state. The California State*
15 *Mediation and Conciliation Service shall prescribe a standard*
16 *form for the written authorization.*

17 *(b) A certified agent is authorized to represent family providers*
18 *within a particular county upon further verification by the*
19 *California State Mediation and Conciliation Service that the agent*
20 *has express written authorization from 20 percent of licensed*
21 *family providers operating in that county.*

22 *(c) In determining whether an agent qualifies as a certified*
23 *agent, the California State Mediation and Conciliation Service*
24 *shall utilize the most recent available list of family providers*
25 *licensed by the state. The State Department of Social Services,*
26 *upon written request, shall provide to the California State*
27 *Mediation and Conciliation Service or any certified agent the most*
28 *recent available list of licensed family providers.*

29 *(d) A certified agent shall lose its certification to represent*
30 *family providers in a particular county upon verification by the*
31 *California State Mediation and Conciliation Service that the*
32 *certified agent no longer has authorization for representation from*
33 *more than 20 percent of licensed family providers in the county,*
34 *provided that the request for decertification was submitted to the*
35 *California State Mediation and Conciliation Service in writing by*
36 *at least 10 family providers in the county who have rescinded their*
37 *authorization for representation by the certified agent in the*
38 *preceding 12 months.*

39 *8417. To facilitate communication and efficient delivery of*
40 *services, certified agents shall meet semiannually with state*

1 funded child care resource and referral programs for the
2 geographic areas they both serve.

3 8418. (a) A certified agent under this article is authorized to
4 negotiate and enter into contracts on behalf of the family providers
5 it represents with any public or private entity that receives or
6 administers state funded public subsidies for child care services.
7 Upon written request by the certified agent to the public or private
8 entity, the parties shall meet and bargain in good faith, except that,
9 a local public or nonprofit entity is not required to negotiate or
10 contract with a certificated agent or the family provider it
11 represents without specific resources being made available from
12 the General Fund or the local public entity for that purpose. The
13 parties are authorized to negotiate the frequency of and processes
14 by which they will undertake ongoing communications. To
15 promote efficiency, the parties are authorized, if mutually agreed
16 upon by all parties, to negotiate collectively with more than one
17 certified representative agent or more than one public or private
18 entity that receives or administers state funded public subsidies for
19 child care services and to bargain a master contract that would
20 apply to all parties involved.

21 (b) The scope of negotiations under subdivision (a) shall be
22 limited to the terms and conditions for the engagement and the
23 procedures for payment of family providers for care provided to
24 children in families receiving state funded publicly subsidized
25 child care. This section does not authorize negotiations over the
26 amounts of payments, subsidized reimbursement rates, parent fee
27 levels, or regulatory procedures that are set by the state nor does
28 it authorize negotiations over the provision of benefits, leave
29 policies, or compensation or payment levels in excess of the
30 amount of state authorized reimbursement rates. This section does
31 not authorize family providers to engage in a concerted strike,
32 boycott, or cessation in the delivery of services.

33 (c) Upon written request by either party, the California State
34 Mediation and Conciliation Service shall appoint a mediator to
35 assist the parties in reaching an agreement.

36 (d) The Superintendent of Public Instruction may, pursuant to
37 regulations adopted under this article, disapprove, in whole or in
38 part, any agreement negotiated by a certified agent if the
39 agreement violates any provision of this article or fails to achieve
40 the benefits or intentions declared in Sections 8410 and 8413.



1 8419. This article does not alter or limit the authority of the
2 state or federal government to license, regulate, subsidize, or
3 establish reimbursement rates for child care services, or to
4 establish parent fees, procedural rights of parents, or parental
5 choice with regard to selecting family providers. This article does
6 not change the self-employed status of a family provider, nor its
7 responsibilities in meeting established legal requirements for
8 operating a child care program.

9 8419.5. With the assistance of the Attorney General, the
10 Superintendent of Public Instruction shall actively supervise any
11 conduct authorized by this article to determine whether the
12 conduct or the regulations permitting the conduct should be
13 continued and whether a more competitive alternative is practical.
14 The superintendent shall periodically review the conduct through
15 annual or more frequent reviews that evaluate whether the conduct
16 is consistent with the objectives stated in Sections 8410 and 8413,
17 and whether the benefits outweigh any disadvantages. If the
18 superintendent determines that the disadvantages attributable to
19 a potential reduction in competition outweigh the benefits of the
20 authorized conduct, the department shall order a modification or
21 discontinuance of the conduct. Conduct authorized by this article
22 that is ordered discontinued by the superintendent shall no longer
23 be deemed to be authorized by law or in the furtherance of the
24 public purposes of the state.

